



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 8, 2003

Ms. Martha G. Sepeda  
City Attorney  
City of Del Rio  
109 West Broadway  
Del Rio, Texas 78840-5527

OR2003-0146

Dear Ms. Sepeda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174727.

The City of Del Rio (the "city") received a request for the "[a]greement and waiver" pertaining to a specified case. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must first address the procedural requirements of the Public Information Act (the "act"). Subsections 552.301(a) and (b) of the act provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code §§ 552.301(a), (b).

It appears from the documents submitted to this office that the city received the request for information on October 11, 2002. You did not request a decision from this office until

October 28, 2002. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). You argue that the requested information is excepted from release under sections 552.103 and 552.107 of the Government Code. However, section 552.103 is a discretionary exception that does not make information confidential, and thus, does not constitute a compelling reason to overcome the presumption of openness. See Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation, and does not itself make information confidential). Likewise, section 552.107 is a discretionary exception that does not constitute a compelling reason to overcome the presumption of openness. See Open Records Decision No. 676 at 11 (2002) (section 552.107 does not provide compelling reason to overcome presumption of openness raised by section 552.302). As you raise no further exceptions to release, you must release the requested information in its entirety. See Gov't Code §§ 552.006, .301(a), .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 174727

Enc: Submitted documents

c: Ms. Karen Gleason  
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(w/o enclosures)